

MONTANA LEGISLATIVE HISTORY

Chapter 150 19 73

Bill H _____ S 95 Original bill & history C

H. Committee on Business & Industry

Hearing Date(s) Feb 21 ✓ C

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Date Out Feb 21 ✓ C

S. Committee on Business & Industry

Hearing Date(s) Jan 31 ✓ C

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Jan 31 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

January 31, 1973

A meeting of the Business and Industry was called to order by the Chairman on January 31, 1973, at 11 o'clock A.M. All members of the committee were present.

Senate Bill No. 379 was discussed and five witnesses appeared in favor of Senate Bill No. 379, while one witnesses appeared to Amend the bill. This bill will be taken up at a later date.

A motion was made by Senator Groff and seconded by Senator Rosell that House Bill No. 95 be concurrred in. Motion carried.

A motion was made that Senate Bill No. 95 Do Pass. Motion carried.

Senate Bill No. 351 was brought up before the Committee and Gary Delano from the Weights and Measures Department appeared before the Committee with amendments to the bill. Bill will be taken up at a later date.

There being no further business the committee members, adjourned. Motion was made and seconded to adjourn.

BUSINESS AND INDUSTRY COMMITTEE

February 21, 1973

The Business and Industry committee meeting was called to order this date with Chairman Mehrens presiding. All members were present with the exception of Rep. Harper, Laas, and Lockrem, who were excused.

The following bills were before the committee for consideration:

SJR 40...Senator Bollinger, sponsor, presented the bill to the committee. Mr. Harold Pitts testified as a proponent. There were no opponents.

SB 95...Senator Turnage, sponsor, explained the bill to the committee. Senator Groff and Mr. Harold Pitts testified as proponents. There were no opponents.

SB 218...Senator Harrison, sponsor, explained the bill to the committee. There were no opponents.

SB 232...Senator McNamer, sponsor, presented the bill to the committee. Mr. Wesley Wertz testified as a proponent. There were no opponents.

The following actions were taken in executive session:

SJR 40...Rep. Selstad moved that SJR 40 BE CONCURRED IN. The motion passed unanimously.

SB 95...Rep. Lien moved SB 95 BE CONCURRED IN. Rep. Swanberg pointed out the typographical error on page 6, section 3, subsection (2), line 16, after the word "through" to be corrected by striking the figure "63-2303.6" and inserting in lieu thereof the figure "67-2303.6". Rep. Lien's motion passed unanimously.

SB 218...Rep. Driscoll moved to amend SB 218, amendment attached. Rep. Driscoll withdrew his motion. Rep. Quilici moved SB 218 BE CONCURRED IN. The motion passed unanimously.

SB 232...Rep. Lien moved SB 232 BE CONCURRED IN. The motion passed unanimously.

There being no further business, the meeting adjourned.


JOHN MEHRENS, CHAIRMAN

which are constructed at approximately the same period of time, but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

Approved: March 6, 1973.

CHAPTER NO. 150

An Act to Amend the Unit Ownership Act to Provide that Lessees of a Condominium Unit may be Treated as Owners and to Provide for Sale of Units Before Construction to be Under the Control of the Department of Business Regulation; Amending Sections 67-2302 through 67-2305, 67-2314, 67-2319, 67-2322 and 67-2323, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 67-2302, R.C.M. 1947, is amended to read as follows:

"67-2302. **Definition of terms.** As used in sections 67-2302 to 67-2342, unless the context requires otherwise:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses agreed upon as common by all the unit owners; and

(c) Expenses declared common by sections 67-2329 and 67-2331, or by the declaration or the bylaws of the particular condominium.

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of sections 67-2301 to 67-2342.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of sections 67-2302 to 67-2342.

(7) "Department" means the department of business regulation.

(8) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) The land on which the building is located except any portion thereof included in a unit or made a limited common element by the declaration;

(b) The foundations, columns, girders, beams, supports, main-walls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and outside storage spaces, *private pathways, sidewalks and private roads*;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of the building necessary or convenient to its existence, maintenance and safety, or normally in common use.

(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(10) "Majority" or "Majority of unit owners," unless otherwise provided in the declaration, means the owners of more than fifty per cent (50%) in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(11) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(12) "Project" means a real estate condominium project; a plan whereby a condominium of two (2) or more units, located on

property submitted to the provisions of 67-2302-67-2342, are offered or proposed to be offered for sale.

(13) "Property" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of sections 67-2302 to 67-2342.

(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. *However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit shall be considered a unit owner.*"

Section 2. Section 67-2303, R.C.M. 1947, is amended to read as follows:

"67-2303. **Application of act—recording of declaration.** In order to submit any property to the provisions of sections 67-2302 to 67-2342, the sole owner or sole lessee or all of the owners or all of the lessees thereof shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration shall be executed in accordance with section 67-2314."

Section 3. There is a new section to be numbered 67-2303.1, which reads as follows:

67-2303.1. (1) If units are conveyed or leased prior to the completion of construction of the building, within which such unit is located, and all of the general common elements of the project (except those general common elements forming a part of a separate building enclosing other units) as set forth in declaration filed pursuant to section 67-2314, all moneys from the sale of the units including any payments made on loan commitments from lending institutions, shall be deposited in escrow by the developer in a fund

with a bank, savings and loan association, or company authorized to do business in the state under an escrow arrangement.

(2) No disbursements may be made from such fund until the completion of the building and general common elements or until compliance with the provisions of sections 67-2303.2 through 67-2303.6, whichever comes first.

(3) If no disbursements are made until after the building and general common elements have been completed, the developer need not comply with sections 67-2302.2 through 67-2303.6.

(4) If sections 67-2303.2 through 67-2303.6 have been complied with, disbursements from such fund may be made, from time to time, to pay for construction costs of the building in proportion to the valuation of the work completed by the contractor as certified by a registered architect or registered professional engineer, and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the fund shall be disbursed only upon completion of the building, free and clear of all mechanic's and materialman's liens. The department may impose other restrictions relative to the retention and disbursement of the fund.

Section 4. There is a new section to be numbered 67-2303.2, which reads as follows:

67-2303.2. (1) The developer of a project shall notify the department in writing prior to the time the project or units thereof are to be offered for sale.

(2) The notice of intention to sell shall fully disclose all material facts on a form prescribed by the department.

(3) The fee for filing the notice of intention is fifty dollars (\$50). For the inspection of the project and examination of the accounts and records of the developer, the department may require the developer to pay the costs thereof, not to exceed the sum of one hundred dollars (\$100) for each day actually required to perform such duties, but in no event shall the total charges exceed the sum of five hundred dollars (\$500).

Section 5. There is a new section to be numbered 67-2303.3, which reads as follows:

67-2303.3. (1) After receipt of the notice of intention to sell, the department shall inspect the project and examine the accounts and records of the developer.

(2) The department shall make a report of its inspection which

shall contain all material facts reasonably available and which shall be on file and available for public inspection in the office of the director.

(3) The department may issue a preliminary report if the notice of intention is incomplete in some respect but the department is satisfied that the report will adequately disclose all material facts which a prospective purchaser should consider and that adequate protection for purchaser's funds has been provided.

(4) A developer may not use a preliminary report to contract for the sale of a unit unless he files the notice of intention to sell, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a depository in accordance with section 67-2303.1.

Section 6. There is a new section to be numbered 67-2303.4, which reads as follows:

67-2303.4. (1) Purchasers funds obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings, unless purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project, and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within one (1) year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

Section 7. There is a new section to be numbered 67-2303.5, which reads as follows:

67-2303.5. (1) The department may not issue a final report prior to completion of construction of a project unless:

(a) There is filed with the department:

(i) a verified statement showing all costs involved in completing the project, including land, ground lease payments and equipment lease payments, real property taxes, construction costs, architect, engineering, and attorneys fees, financing costs, provisions for contingency, and other costs which must be paid on or be-

fore the completion of construction of the building;

(ii) a verified estimate of the time of completion of construction of the total project;

(iii) satisfactory evidence of sufficient funds to cover the total project cost from purchasers funds, equity funds, interim or permanent loan commitments, or other sources;

(iv) a copy of the executed construction contract;

(v) satisfactory evidence of a performance bond of not less than one hundred per cent (100%) of the cost of construction with a reliable surety company;

(vi) if purchasers funds are to be used for construction, an executed copy of the escrow agreement for the escrow fund required under section 67-2303.1 for financing construction, which shall expressly provide for:

(A) no disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

(B) no disbursements from the balance of the escrow fund after payment of construction costs pursuant to the preceding paragraph until the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute.

(b) The declaration provided for in section 67-2314 has been filed.

(2) If after a final report has been issued, any circumstance occurs which would render the final report misleading as to purchasers, or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the department to enable it to issue a supplementary report describing the changes. Sales shall not resume until the supplementary report has been issued.

Section 8. There is a new section to be numbered 67-2203.6, which reads as follows:

67-2303.6. (1) The developer, or any other person offering any unit in a condominium project prior to completion of its construction, shall not enter into a binding contract or agreement for the sale or resale thereof until:

(a) a true copy of the department's final report thereon with

all supplementary reports has been given to the prospective purchaser;

(b) the prospective purchaser has been given an opportunity to read the report; and

(c) the prospective purchaser executes a receipt for the reports.

(2) Receipts taken for any report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the department for a period of three (3) years from the date the receipt was taken.

Section 9. Section 67-2304, R.C.M. 1947, is amended to read as follows:

"67-2304. Status of the unit. While the property is submitted to sections 67-2302 to 67-2342, a unit in the building may be individually conveyed, *leased or* encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts *inter vivos or mortis causa*, as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable."

Section 10. Section 67-2305, R.C.M. 1947, is amended to read as follows:

"67-2305. Ownership of unit. Each unit owner shall be entitled to the exclusive ownership and possession of his unit. *A unit may be jointly or commonly owned by more than one (1) person.*"

Section 11. Section 67-2314, R.C.M. 1947, is amended to read as follows:

"67-2314. Contents of declaration. A declaration shall contain:

(1) A description of the land, *whether leased or in fee simple, on which the building is or is to be located.*

(2) The name by which the property shall be known and a general description of the building, including the number of stories and basements, the number of units and the principal materials of which it is constructed.

(3) The unit designation, location, approximate area of each unit and any other data necessary for proper identification.

(4) A description of the general common elements and the percentage of the interest of each unit owner therein.

(5) A description of the limited common elements, if any, stating to which units their use is reserved and in what percentage.

(6) A statement of the use for which the building and each of the units is intended.

(7) The name of a person to receive service of process in the cases provided in section 67-2338, and the residence or place of business of such person which shall be within the county in which the property is located.

(8) Any other details regarding the property that the person executing the declaration considers desirable."

Section 12. Section 67-2319, R.C.M. 1947, is amended to read as follows:

"67-2319. Floor plans recorded with declaration. Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit including the unit designation, location and dimensions of each unit and the common areas to which each has access. There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. *If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, unit designation and dimensions of each unit as built, there shall be recorded within thirty (30) days from the date of completion of the building, or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect or registered professional engineer certifying that the floor plans previously filed, or being filed simultaneously with the amendment, fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.*"

Section 13. Section 67-2322, R.C.M. 1947, is amended to read as follows:

"67-2322. Contents of deed or leases of unit. The deed or lease of a unit shall contain:

(1) A description of the land, the name of the property, and the recording index numbers and date of recording of the declaration.

(2) The unit designation of the unit.

(3) The use for which the unit is intended.

(4) The percentage of undivided interest in the common elements appertaining to the unit.

(5) Any further details the grantor and grantee or lessor and lessee may consider desirable."

Section 14. Section 67-2323, R.C.M. 1947, is amended to read as follows:

"67-2323. **Blanket mortgages and other blanket liens affecting unit at time of first conveyance.** At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded."

Section 15. If the department has satisfactory evidence to indicate that any person has violated any provision of section 67-2301 to 67-2342, it may conduct an investigation and bring an action for injunction.

Section 16. Any person who violates any provision of sections 67-2301 to 67-2342 or any rule of the department under such sections is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for not more than one (1) year, or both.

Approved: March 6, 1973.

CHAPTER NO. 151

An Act Providing for Inclusion of the State Fund Within the Definition of "Insurer" in the Workmen's Compensation Act, Title 92, R.C.M. 1947; and Amending Section 92-435, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-435, R.C.M. 1947, is amended to read as follows:

"92-435. **Insurer defined.** "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act and includes industrial insurance account created by this act, known as the "state fund."

Approved: March 6, 1973.

CHAPTER NO. 152

An Act to Provide a Definition of Residency to Determine County or State Responsibility for Financial Support of General Relief Recipients; and to Repeal Section 71-302, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Eligibility requirements for general relief.** (1) There are no residency requirements for an applicant to be eligible for general relief in Montana.

(2) Any person otherwise qualified who has not maintained legal residence in a single county for one (1) year or more shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he has resided for one (1) year in said county. If a recipient moves from one county to another county, he shall for the purpose of this act be deemed to retain residence in the original county until he has resided in the second county for a period of one (1) year at which time he will be deemed to have gained residence in the second county.

(3) If a person is absent from the state voluntarily, he shall thereby be ineligible for general relief in the state of Montana.

(4) Time spent as a patient in a licensed nursing home or hospital, or a private charitable institution, shall not in any case be considered in determining the matter of county residence.

Section 2. Section 71-302, R.C.M. 1947, is repealed.

Approved: March 6, 1973.

CHAPTER NO. 153

An Act to Amend Section 89-1208, R.C.M. 1947, to Raise the Compensation of Irrigation District Commissioners From Ten Dollars (\$10) to Twenty Dollars (\$20) and to Provide a Mileage Allowance of Twelve Cents (\$.12) Per Mile.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-1208, R.C.M. 1947, is amended to read as follows:

"89-1208. **Compensation of commissioners—penalty for interest in contract—bonds of commissioners.** The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive not to exceed twenty dollars (\$20), per day for